

REMARKS

Claims 1-8 and 39-42 are pending in this Application. Claims 9-38 have been canceled without prejudice. In the Office Action mailed April 28, 2006, the Examiner rejected Claim 41 under 35 U.S.C. § 112, first paragraph and 35 U.S.C. § 132 as new matter. In addition, Claims 1-8 and 39-41 are rejected under 35 U.S.C. § 102(b) as being anticipated by or, in alternative, under 35 U.S.C. § 103(a) as being obvious over US Patent No. 4,647,505 by Blackie et al. (herein "Blackie"), US Patent No. 6,562,743 by Cook et al. ("the '743 patent"), US Patent No. 5,021,093 by Beshay (herein "Beshay"), or an Abstract from the Proceedings of the Materials Research Society's Symposium on Mechanisms of Chemical Degradation of Cement-based Systems, Boston, Nov. 27-30, 1995 by Lin et al. (herein "Lin"). In addition, claims are rejected under 35 U.S.C. § 102(a and e) as being anticipated by or, in alternative, under 35 U.S.C. § 103(a) as being obvious over US Patent No. 6,933,038 by Nanko et al (herein "Nanko").

Applicants herewith respectfully submit amended Claims 1 and 42, each amended to include "wherein at least a portion of the fibers are pretreated with a quaternaryamine dispersant to form chemically treated cellulose fibers with improved dispersibility. . . thereby substantially reducing inter-fiber hydrogen bonding so that the chemically treated cellulose fibers are more readily dispersed in the building material to form a fiber cement mixture." [Emphasis added to show amended text.] Support for such amendments may be found throughout the specification, see, for example, paragraphs [0023] and [0034] for pretreatment with a

quaternaryamine dispersant and the Abstract as well as paragraphs [0011], [0013], [0022]-[0023], [0030], [0052], and [0070] for inter-fiber hydrogen bonding. No new matter has been introduced with the amended Claim 1 and 42. Claims 2, 6, and 8 have been amended as to matters of form and to provide proper antecedent basis. No new matter is introduced with these amended claims. Accordingly, entry and allowance are respectfully requested.

With regard to the new matter rejection of Claim 41 under 35 U.S.C. § 112, first paragraph, and 35 U.S.C. § 132, Applicants submit that support for new Claim 41 is found in the specification at, e.g., paragraph [0033]. Accordingly, Applicants submit that Claim 41 is not new matter and respectfully request the rejection under 35 U.S.C. § 112, second paragraph, and 35 U.S.C. § 132 be removed.

Applicants further submit that neither Nanko, Blackie, Beshay or Lin alone or in combination anticipate or make obvious Applicants' claimed invention. With regard to Nanko, Applicants point out that the reference merely teaches mixing a fiber material with a mineral-based material (e.g., cement) and an *inorganic* coordinating material (e.g., Claims; Col. 7, ll. 1-2; Col. 7, ll. 15-30;) and does not specifically teach or suggest the use of a quaternaryamine dispersant. In fact, Nanko explicitly teaches against use of a quaternaryamine dispersant by specifically requiring an *inorganic* coordinating material, which a quaternaryamine dispersant is not. As such, Nanko does not suggest or describe, expressly or inherently, each and every element as set forth in amended independent Claims 1 or 42, nor the claimed invention as a whole, nor does Nanko have elements

arranged as required by these amended claims. Therefore, amended Claims 1 and 42 and all claims depending therefrom are not anticipated by Nanko. Moreover, because Nanko teaches away from the claimed invention and is unpredictable with respect to specific teachings of the claimed invention, such as the claimed treatment of fibers, there is no suggestion or motivation, either in the Nanko reference or to one of ordinary skill in the art, to modify Nanko in order to provide amended Claims 1 or 42. At least some degree of predictability in the reference teaching is required for a showing of obviousness. For this reason, there is no reasonable expectation of any success. Accordingly, neither amended Claims 1 or 42 "as a whole" are obvious over Nanko. Applicants respectfully request the claims rejections over Nanko be removed for the reasons set forth above.

With regard to Blackie, Applicants respectfully point out that Blackie merely teaches fibers "which have titanium and/or zirconium radicals linked to residues of hydroxyl groups" (Col. 3, ll. 8-9). Blackie does not specifically teach or suggest the use of a quaternaryamine dispersant. In fact, Blackie teaches against the use of a quaternaryamine dispersant by specifically requiring only titanium or zirconium chelators, which are not quaternaryamine dispersants. Because, Blackie does not suggest or describe, expressly or inherently, each and every element as set forth in amended independent Claims 1 or 42, nor the claimed invention as a whole, nor does Blackie have elements arranged as required by amended Claims 1 or 42, such claims and all claims depending therefrom are not anticipated by Blackie. Moreover, because Blackie teaches away from the claimed invention and is unpredictable with respect to specific teachings of the claimed

invention, such as the claimed treatment of fibers, there is no suggestion or motivation, either in the Blackie reference or to one of ordinary skill in the art, to modify Blackie in order to provide amended Claims 1 or 42. At least some degree of predictability in the reference teaching is required for a showing of obviousness. For this reason, there is no reasonable expectation of any success. Accordingly, neither amended Claim 1 or amended Claim 42 "as a whole" are obvious over Blackie. Applicants respectfully request the claims rejections over Blackie be removed for the reasons set forth above.

With regard to Beshay, Applicants respectfully point out that Beshay merely teaches "a primary chemical bonding at the cellulose-silane interface" by "grafting of a silylating agent onto the cellulosic material" (Col. 1, ll. 35-38). Beshay does not specifically teach or suggest the use of a quaternaryamine dispersant or to substantially inhibit bonding between hydroxyl groups of different fibers. In fact, Beshay teaches against the use of a quaternaryamine dispersant by specifically requiring only a grafting silylating agent (gamma-aminopropyltriethoxysilane), which is not a quaternaryamine dispersant. Therefore, Beshay does not suggest or describe, expressly or inherently, each and every element as set forth in amended independent Claims 1 or 42, nor the claimed invention as a whole, nor does Beshay have elements arranged as required by amended Claims 1 or 42. As such, no claims are anticipated by Beshay. Moreover, because Beshay teaches away from the claimed invention and is unpredictable with respect to specific teachings of the claimed invention, such as the claimed treatment of fibers, there is no suggestion or motivation, either in the Beshay reference or to one of ordinary

skill in the art, to modify Beshay in order to provide amended Claims 1 or 42. At least some degree of predictability in the reference teaching is required for a showing of obviousness. For this reason, there is no reasonable expectation of any success. Accordingly, neither amended Claim 1 or amended Claim 42 "as a whole" are obvious over Beshay. Applicants respectfully request the claims rejections over Beshay be removed for the reasons set forth above.

With regard to Lin, Applicants respectfully point out that Lin merely teaches a dry mixture of "dry wood fibers, cement and powdered superplasticizer" (pg. 109, Col. 1, last 4 lines) in which fibers are treated with a material that is an "inorganics, such as CaCl_2 , alkali hydroxides or silicates" or "organic polymers and monomers, such as carbowaxes, polyethylene glycol, vinyl monomers and acrylonitrile and acrylics" (pg. 109, Col. 1, ll. 24-26). Lin does not specifically teach or suggest the use of a quaternaryamine dispersant. In fact, Lin teaches against the use of a quaternaryamine dispersant by having a specific requirement only for materials as described above, none of which are equivalent to or even similar to a quaternaryamine dispersant. Therefore, Lin does not suggest or describe, expressly or inherently, each and every element as set forth in amended independent Claims 1 or 42. Lin also does not suggest or describe the claimed invention as a whole, nor does Lin have elements arranged as required by amended Claims 1 or 42. As such, Claims 1 or 42 and all claims depending therefrom are not anticipated by Lin. Moreover, because Lin teaches away from the claimed invention and is unpredictable with respect to specific teachings of the claimed invention, such as the claimed

treatment of fibers, there is no suggestion or motivation, either in Lin or to one of ordinary skill in the art, to modify Lin in order to provide amended Claims 1 or 42. At least some degree of predictability in the reference teaching is required for a showing of obviousness. For this reason, there is no reasonable expectation of any success. Accordingly, neither amended Claim 1 or amended Claim 42 "as a whole" are obvious over Lin. Applicants respectfully request the claims rejections over Lin be removed for the reasons set forth above.

CONCLUSION

Applicants respectfully submit that the Application is in condition for allowance, and pursuant to the filing of this Amendment and a Request for Continued Examination Applicant earnestly seeks such allowance of Claims 1-8 and 39-42. Should the Examiner have questions, comments, or suggestions in furtherance of the prosecution of this Application, please contact Applicants' representative at 214.999.4330. Applicants, through their representative, stand ready to conduct a telephone interview with the Examiner to review this Application if the Examiner believes that such an interview would assist in the advancement of this Application.

To the extent that any further fees are required during the pendency of this Application, including petition fees, the Commissioner is hereby authorized to charge payment of any additional fees, including, without limitation, any fees under 37 C.F.R. § 1.16 or 37 C.F.R. § 1.17, to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP and reference Attorney Docket No. 129843-1051. In the event that any additional time is needed for this filing, or any additional time in excess of that requested in a petition for an extension of time, please consider this a petition for an extension of time for any needed extension of time pursuant to 37 C.F.R. § 1.136 or any other section or provision of Title 37. Applicants respectfully request that the Commissioner grant any such petition and authorize the Commissioner to charge the Deposit Account referenced above. Please credit any overpayments to this same Deposit Account.

Attorney Docket No. HARD1.033A (129843.1051)
Customer No. 60148

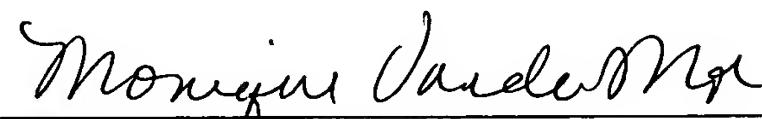
AMENDMENT AND RESPONSE
Application No. 10/090,060

13

This is intended to be a complete response to the Office Action mailed April 28, 2006.

Please direct all correspondence to the practitioner listed below at Customer No. 60148.

Respectfully submitted,


Monique A. Vander Molen
Registration No. 53,716

Gardere Wynne Sewell LLP
Thanksgiving Tower
1601 Elm Street, Suite 3000
Dallas, Texas 75201-4761
Telephone: 214.999.4330
Facsimile: 214.999.3330
Email: ip@gardere.com

July 20, 2006